

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Miscellaneous Civil Application 375 of 2009

PETER KINYANJUI WAWERU.....RESPONDENT

VERSUS

PATRICK KAMAU KIBE.....APPLICANT

R U L I N G

1. Patrick Kamau Kibe hereinafter referred to as the applicant seeks to have time extended to enable him file an appeal against the judgment delivered in Kigumo RMCC No. 212 of 2007. The applicant also seeks an order of stay of execution pending the hearing and determination of his intended appeal. In his affidavit filed in support of the application, the applicant depones that judgment in the lower Court was delivered against him on 5th February, 2009 and that he did instruct his counsel to file an appeal. He is now apprehensive that the respondent, Peter Kinyanjui Waweru will execute the decree against him as his motor vehicle KAX 962 J has been proclaimed.
2. Counsel for the applicant has explained from the Bar that there were discussions between the applicant and his insurers which took a while and therefore the instructions to file the appeal were given late. It is maintained that unless the orders sought are granted the applicant will suffer substantial loss.
3. The application is opposed through a replying affidavit sworn by Duncan K. Maina the advocate for the respondent. The counsel depones that the intended appeal is a non-starter as no worthwhile grounds of appeal, has been disclosed. It is further maintained that the application is frivolous and is only intended to deny the respondent the right to enjoy the fruits of his judgment. Miss Kiniti, who appeared for the respondent maintains that the applicant had not revealed any reasonable explanation for the delay in filing the appeal. She therefore urges the Court to dismiss the application.
4. I have given due consideration to this application. Under section 79 G of the Civil Procedure Act, this Court has power to enlarge time for the filing of an appeal provided the applicant satisfies the Court that he had a good and sufficient cause for not filing the appeal in time. Order XLIX Rule 5 of the Civil Procedure Rules also empowers this Court to extend time for the doing of any act or taking any proceedings under the Civil Procedure Rules as the justice of the case may require.
5. In this case the judgment subject of the intended appeal was delivered on 6th February, 2009. More than 100 days after that judgement, the applicants had taken no action to file his appeal. The applicant has given no explanation for this delay. The only attempt to explain the delay was made by his counsel who alleges that discussions were going on with her insurers. I find that that explanation is completely inadequate. The applicant was aware that he only had 30 days to file his appeal. There was nothing to prevent the applicant from filing the appeal and proceeding with the discussions with the insurers at the same time. It is clear that the appeal is an afterthought which has been prompted by the process of execution initiated by the respondent. I find that the applicant has failed to disclose a good and sufficient reason for not filing the appeal within time. It will not be in the interest of justice to extend time for him to file the appeal. Nor would it be fair to interfere with the process of execution which is underway. Moreover the applicant has not demonstrated any substantial loss that he is likely to suffer if an order for

stay of execution is not granted.

Accordingly, this application fails. It is rejected with costs to the respondent. These shall be the orders of this Court.

Dated and delivered this 2nd day of July, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Mrs. Waweru the applicant

Advocate for the respondent, absent